

1 Joseph H. Harrington
2 Acting United States Attorney
3 Eastern District of Washington
4 Brian M. Donovan
5 Assistant United States Attorney
P.O. Box 1494
6 Spokane, WA 99210-1494
Telephone: (509)353-2767

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

No. 2:19-CR-00111-WFN-1

10 Plaintiff,

MOTION FOR SCHEDULING
11 ORDER TO GOVERN THIRD-
12 PARTY FORFEITURE CLAIMS

vs.

13 LUIS MANUEL FARIAS-CARDENAS,

Hearing Date and Time:
14 Defendant. April 19, 2021 at 6:30 p.m.

15 Without Oral Argument

17 The United States of America, by its undersigned counsel, respectfully submits
18 its Motion for Scheduling Order to Govern Third Party Forfeiture Claims, filed in the
19 above entitled case. A proposed Order is submitted with this motion.

21 I. RELEVANT PROCEDURAL FACTS

23 In the plea agreement he entered on September 22, 2020, the Defendant, Luis
24 Manuel Farias-Cardenas, agreed to forfeit the following listed assets and
25 acknowledged that the assets were subject to forfeiture to the United States pursuant
26 to 21 U.S.C. § 853 for the offense Conspiracy to Distribute 500 Grams or More of a
27 Mixture or Substance Containing a Detectable Amount of Methamphetamine and a
28 MOTION FOR SCHEDULING ORDER 1

Mixture of Substance Containing a Detectable Amount of Heroin, in violation of 21
U.S.C. §§ 846, 841(a)(1), (b)(1)(A)(viii), and (b)(1)(C), to which he pleaded guilty
(ECF No. 745 at 13- 18):

REAL PROPERTY

1. The real property being forfeited is commonly known as Parcel #:

121145000, Moses Lake, Washington, described as follows:

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as Parcel #: 121145000, Moses Lake, Washington, legally described as follows:

LOTS 1 TO 3 BLOCK 2 WHEELER

Tax Parcel No. 121145000

2. The real property being forfeited is commonly known as Parcel #:

121146000, Moses Lake, Washington, described as follows:

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as Parcel #: 121146000, Moses Lake, Washington, legally described as follows:

LOT 4 BLOCK 2 WHEELER

Tax Parcel No. 121146000

3. The real property being forfeited is commonly known as 14929 NE 4th

Street, Moses Lake, Washington, described as follows:

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, known as 14929 NE 4th Street, Moses Lake, Washington, legally described as follows:

LOTS 5 & 6 BLOCK 2 WHEELER

Tax Parcel Nos. 121147000 and 600437000

MOTION FOR SCHEDULING ORDER 2

4. The real property being forfeited is commonly known as 1912 West Atkinson Road, Othello, Washington, described as follows:

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 1912 West Atkinson Road, Othello, Washington, legally described as follows:

TAX #307 IN FU 222, BLK 49, Described as follows: Beginning at the corner of FU 222, thence S52°27'E along the SWly boundary of FU 25.3'; thence S57°25'E 109.1'; thence S57°24'30"E 241' to the TPOB; thence N32°35'30"E 315'; thence S57°24'30"E 155; thence S32°35'30"W 348', more or less, to the SWly boundary of said FU222; thence N40°42'10"W 114.84'; thence N57°24'30"W 45' to the TPOB. Containing 1.16 Acres, more or less.

Tax Parcel No. 2100492220300

5. The real property being forfeited is commonly known as 798 South Thacker Road, Othello, Washington, described as follows:

All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 798 South Thacker Road, Othello, Washington, legally described as follows:

TAX #118 IN FU 76, BLK 49 LYING W. OF THACKER ROAD,
Described as follows: that ptn of FU 76, Blk 49 as shown on the
7th revision of final plat, lying in the S1/2 of 8-15-29. Beginning at
the SW corner of said FU; thence N0°36'10"W along the West
boundary of said Unit 100'; thence N71°45'E 591', more or less, to
the centerline of the county road known as Thacker Rd; thence
SEly along said centerline 303', more or less, to the South line of
said section; thence Wly along said South line 675'; more or less,
to the point of beginning.

Tax Parcel No. 2100490760400

Thereafter, as required by Fed. R. Crim. P. 32.2(6) and 21 U.S.C. § 853(n)(1),

the United States sent notice of the pending forfeiture to potential claimants. Based

upon the September 23, 2020, notice date, the claim deadline was October 23, 2020.

See ECF No. 909.

On October 20, 2020, Maria de J Farias, claimed an interest in the following real properties: Parcel #: 121145000, Moses Lake, Washington; Parcel #: 121146000, Moses Lake, Washington; and, 14929 NE 4th Street, Moses Lake, Washington. ECF No. 781.

On October 22, 2020, Juan and Nancy Aguilar (hereinafter collectively the “Aguilars”), claimed an interest in 1912 West Atkinson Road, Othello, Washington. ECF No. 784.

II. LEGAL AUTHORITY

The criminal forfeiture process on third-party claims is governed by Fed. R. Crim. P. 32.2(c) and 21 U.S.C. § 853(n). To resolve any factual issues presented by a third-party claim, the Court may permit discovery and entertain motions, in accord with the Federal Rules of Civil Procedure, pursuant to Fed. R. Crim. P. 32.2(c)(1)(B). If the claim is not resolved through discovery and motions, the Court conducts a hearing pursuant to 21 U.S.C. § 853(n)(2) & (4) – (6).

III. ARGUMENT

In support of her claim, Ms. Farias simply states that she “claims an ownership interest in the defendant property in this matter, such claim being superior to that of the United States of America and equal to or superior to that of Luis Faris.” ECF No. 781 at 2. Other than property documents and marriage information, no additional

1 factual information is provided by Ms. Farias in support of her claim. As such,
2 discovery is needed for the United States to determine the validity, if any, of Ms.
3 Farias's claim.

4 The Aguilars claim that on or around March 11, 2011, they entered into an
5 unrecorded contract with Luis M. Farias for the sale of the property located at 1912
6 West Atkinson Road, Othello, Washington. ECF No. 784 at 2. The Aguilars claim that
7 the subject property sold for \$200,000, with \$10,000 as a down payment and the
8 remaining balance payable in monthly installments of \$850 per month. *Id.* The
9 Aguilars further allege that Farias has paid a total of \$146,700 under the real estate
10 contract with a remaining balance of \$93,017.73. *Id.* at 3. Because the Aguilars'
11 alleged interest in the property is based on an admittedly unrecorded contract,
12 discovery is necessary for the United States to ascertain the legitimacy of the
13 Aguilars' claim.

14 Because the United States cannot assess the validity of Ms. Farias's and the
15 Aguilars' claims based on the material they have submitted, additional discovery will
16 be required. For this reason, the United States moves the Court, pursuant to Fed. R.
17 Crim. P. 32.2(c)(1) and 21 U.S.C. § 853(n), to set a discovery schedule for Ms.
18 Farias's claim and the Aguilars' claim, followed by a date for motions and a court
19 hearing.¹

20
21
22
23
24
25
26

¹ The claim filed by Ms. Farias includes a jury demand. ECF No. 781 at 1. However, a
27 jury demand is not permitted for an ancillary forfeiture claim such as the one filed by
28

1 Specifically, the United States requests the Court allow the parties 4 months for
2 discovery, followed by a 30-day date for dispositive motions and subsequent hearing
3 dates for each claim. The hearings will only be necessary if the United States is unable
4 to resolve the claim through discovery and motions. A proposed scheduling order is
5 filed herewith.

7 DATED: March 19, 2021
8

9 Joseph H. Harrington
10 Acting United States Attorney

11 s/ Brian M. Donovan
12 Brian M. Donovan
13 Assistant United States Attorney

14
15
16
17
18
19
20
21
22
23
24
25
26
27 Ms. Farias. 21 U.S.C. § 853(n)(2) (“The hearing shall be held before the court alone,
28 without a jury”).

MOTION FOR SCHEDULING ORDER 6

1
CERTIFICATE OF SERVICE

2 I hereby certify that on March 19, 2021, I electronically filed the foregoing with
3 the Clerk of the Court using the CM/ECF System which will send notification of such
4 filing to the following CM/ECF participant(s):
5

6 Lyliane S. Couture
7 Attorney for Claimant Maria d J Farias
lyliane.c@gmail.com

8 Trevor Ryan Bevier
9 Attorney for Claimants Juan and Nancy Aguilar
10 trevor@huberdeaulaw.com

11 Christopher R Black
12 Attorney for Defendant
13 Luis Manuel Farias-Cardenas
chris@blacklawseattle.com

14 *s/ Brian M. Donovan*
15 Brian M. Donovan
16 Assistant United States Attorney